

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00355-16
45-004-15-1-5-01812-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-09-04-476-010.000-004
Assessment Years: 2013, 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2015 assessments of his property located at 9305 Sunrise Boulevard in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential lot at \$4,600 (land only) for both 2013 and 2015.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On January 13, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property record card (“PRC”) for 2015-2019
 - Petitioner Exhibit B: PRC for 2011-2013
 - Petitioner Exhibit C: GIS map
 - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35th Avenue, Gary
 - Petitioner Exhibit E: PRC for 739-29 W. 35th Avenue (2015-2019)
 - Petitioner Exhibit F: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Gary
 - Petitioner Exhibit G: PRC for 2517 Washington Street (2015-2019)

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| Petitioner Exhibit H: | PRC for 2521 Washington Street (2015-2019) |
| Petitioner Exhibit I: | PRC for 2525 Washington Street (2015-2019) |
| Petitioner Exhibit J: | Cover letter for Kovachevich appraisal for 1109 Oklahoma Street, Gary |
| Petitioner Exhibit K: | PRC for 1109 Oklahoma Street (2015-2019) |
| Petitioner Exhibit L: | 2019 tax bill for 1109 Oklahoma Street ¹ |

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

- 5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
- 6. The property’s assessment did not change from 2012 to 2013 or from 2014 to 2015. Nowacki therefore bears the burden of proof for both years under appeal.

OBJECTIONS

- 7. The Assessor objected to Petitioner Exhibits D-L. He argued they were not relevant to the proceeding. He also objected to their admission citing the ethics and confidentiality rules in the Uniform Standards of Professional Appraisal Practice (“USPAP”). Additionally, Nowacki is neither an intended or authorized user. The ALJ took the objections under advisement. Because the exhibits provide information regarding other Gary properties, they have at least minimal relevance to this proceeding. The Board is in no position to know or address how Mr. Nowacki obtained these documents. Whether Nowacki is listed as an intended or authorized user for these appraisals is not a sufficient reason to exclude them. The Assessor did not explain how the USPAP rules applied to Nowacki or how violation of those rules support exclusion of the evidence in this proceeding. We therefore overrule the objections, and note that these exhibits do not affect the outcome.

SUMMARY OF CONTENTIONS

- 8. Nowacki’s case:
 - a. The subject property has churned through the system since 1971 because it is over-assessed. Because of the over-assessment, Nowacki was able to acquire the property

¹ The Assessor submitted no exhibits.

- for a nominal bid of \$25. Had the Assessor correctly assessed the property there would have been more interest at the auction. The assessed value has decreased considerably, but it is not due to the appeals. Appeals are worthless. They have no relevancy to getting your property assessed. Nowacki's proposed value of \$3,200 is much closer to the actual value of the property than the Assessor's value. *Nowacki testimony; Pet'r Exs. A, B.*
- b. Nowacki contends the characteristics on the PRC are incorrect. Utilities are not available. The streets and roads are shown as unpaved, but there are no streets or roads. The neighborhood has the curious life-cycle designation of "other". *Nowacki testimony; Pet'r Exs. A, B, C.*
 - c. Nowacki agrees that he is not the intended user of the appraisals. The appraisal letter states that the reports were intended to satisfy statutory, regulatory, and judicial requirements associated with setting a market value-in-use for tax assessment purposes. It is intended to help the Assessor correct assessments. The appraisals were intended to be part of the fraud being perpetrated on property owners. The appraisals are not intended to be available to property owners. No one would want the public to know that the Assessor's office is assessing properties at 34 times the appraised valuation. Nowacki is submitting this evidence so that the State knows what is going on in his community, and sees how his community is being destroyed by over-assessment. *Nowacki testimony; Pet'r Exs. D-L.*

9. The Assessor's case:

- a. The USPAP ethics rules state that the contents of an appraisal, especially the assignment results, are confidential between the client and the appraiser. Nowacki is neither of those, and should not be privy to this information. He has no substantiation as to why the appraisals were done, what they were for, and what they will be used for in the future. Nowacki's testimony is speculation and personal opinion. He presented no substantive evidence relating to the value of the subject property. The Assessor requests no change to the assessed value for either year. *Metz testimony; James testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 or 2015 assessments. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax

value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id*; *see also*, *Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Normally a party does not make a case for changing an assessment simply by showing how the DLGF’s assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (“Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Instead, the party must offer relevant market-based evidence. *See id.* The assessment date for both 2013 and 2015 is March 1st. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$3,200 for both 2013 and 2015, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki claims that the appraisals show the three comparable properties are over-assessed, therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessments. The Tax Court has previously held, “when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals.” *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its

property taxes were higher than they would have been if other property in Lake County had been properly assessed).

- e. Nowacki's data for the three properties is insufficient to support a uniform and equal argument. Not only did Nowacki provide incomplete appraisals, he failed to compare the properties to the subject property. He did not address similarities or differences. Although Nowacki presented data for other Lake County properties, he did not show that his incomplete data met the standards of a ratio study or constituted a statistically reliable sample.
- f. Nowacki also claims that the characteristics on the property record card are not accurate. These arguments go solely to the methodology used by the Assessor. Nowacki did not show how changes to the property record card would affect the market value-in-use of the property. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling* at 678. Instead, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
- g. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013 or 2015, he failed to make a prima facie case for lower assessments. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the assessments.

ISSUED: April 15, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
9305 Sunrise Boulevard
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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.